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Filing date: **12/04/2017**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91233690
Party	Defendant Rusty Ralph Lemorande
Correspondence Address	RUSTY RALPH LEMORANDE 1245 N CRESCENT HTS BLVD #B LOS ANGELES, CA 90046 UNITED STATES Email: lemorande@gmail.com
Submission	Motion to Compel Discovery or Disclosure
Filer's Name	Rusty Ralph Lemorande
Filer's email	lemorande@gmail.com
Signature	/Rusty Ralph Lemorande/
Date	12/04/2017
Attachments	SEND ESTTA. Motion to Compel Interrogatories.pdf(1417157 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BE-
FORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Serial No: 87090468
Publication date: 11/29/2016
Opposition Number: 91233690
For the Mark: NIGHT OF THE LIVING DEAD

Rusty Lemorande <i>in pro per</i>)
)
Petitioner,)
)
vs.)
)
IMAGE 10, INC.)
)
Respondent.)
)

PETITIONER’S MOTION TO COMPEL DISCOVERY

Pursuant to Rule 37 of the Federal Rules of Civil Procedure and Rule 2.120 of the Trademark Rules of Practice (37 C.F.R. § 2.120), Petitioner Rusty Lemorande, (“**Lemorande**”), hereby moves the Board for an Order compelling Respondent IMAGE 10, INC. (“**Image 10**”), to respond appropriately to Lemorande’s First Set of Interrogatories in accordance with the Federal Rules of Civil Procedure.

In support of this motion, Petitioner states as follows:

A: GENERAL REVIEW AND FACTUAL BACKGROUND

Based on a bonafide intent to use, Lemorande diligently researched the mark, “Night Of The Living Dead” (the Mark) and found no registration or evidence of continued or common source use.

Therefore, Lemorande filed his mark application for ‘motion pictures’. The

USPTO examiner, presumably based on his or her own research, found no conflicts, and therefore, that application was posted for publication by the USPTO which resulted in an Opposition by Image 10.

That Opposition made claims of **prior use, continued use and superior common law rights** without stating any geographic limitation.

Petitioner has reached out to Image 10 to find out if any of those rights can be substantiated, but has received no meaningful response.

Specifically, Petitioner filed discovery requests to see if there is any evidence of:

a. Any prior, mark rights to the film created in 1968 (which, incidentally, showed no clear owner of a mark in 1968),

b. Any continuous use by Image 10 (which was defunct according to Pennsylvania corporate records for almost 45 years before filing the Opposition) or,

c. Any indication that Image 10 has ever licensed the mark to the many films and TV shows using the same title in the 49 year period following the 1968 movie),

All the above would clearly help Image 10 substantiate its claims.

For the record, in their initial discovery conference, Lemorande and Image 10 agreed that email correspondence was acceptable to both parties.

Petitioner's First Set of Interrogatories was timely served to Image 10 on September 25 of this year.

The response to Petitioner's Interrogatories consisted of almost entirely boilerplate objections and no responsive answers.

In addition, **three follow-up e-mails** (two seeking to meet & confer) sent by Lemorande were met with silence and no response of any kind. (See Exhibits A, B and C).

Image 10 did finally serve its responses, but not by email, as had been agreed by the parties, or by a DROPBOX (its setup and existence timely communicated to Respondent) for the convenience of the parties (Exhibit H), but by a more time-consuming snail-mail process.

A. FACTUAL BACKGROUND

On June 20, 2016, Lemorande submitted an application for the “Night Of The Living Dead” (the Mark). That application was published for opposition on November 29, 2016 by the USPTO, which did result in an Opposition action filed by Image 10.

Petitioner served Interrogatories on Image 10 on September 25, 2017. Approximately two weeks after the deadline for responses by Image 10, Petitioner sent an inquiry email (Exhibit D) asking 1) when the responses would be sent, and 2) why the delay occurred. Image 10’s response to this email (Exhibit E) was confusing. It claimed that an email attempt had been made previously, but failed due to the size of the attachment (purportedly in excess of 25mb, the Gmail attachment limit).

Petitioner sent a follow-up email on November 7 (Exhibit F), requesting a copy of Image 10’s internal email, which disclosed the transmission error. However, the response email subsequently received from Opposer on that same day (Exhibit G), revealed that Image 10’s purported previous “attempted transmission” occurred on that very same date (November 7 - the date of Lemorande’s inquiry).

Nevertheless, anxious to get the response documents, and given Image 10’s unexplained delays had consumed precious discovery time, Petitioner created a DROPBOX uniquely for the parties, linking the DROPBOX to Respondent, to enable same day transmission of this time-sensitive information, and sent an email commenting on

Gmail's 25mb limit. (Exhibit H and I)

As of this date, there has been no response to Lemorande's November 7th inquiry, and the DROPBOX has not been used.

However, Image 10 did send the documents eventually by **snail mail**, further delaying receipt by Petitioner. The size of the paper document finally received (34 pages) did not explain why this PDF would have exceeded 25mb. (Petitioner's several decades of use of the PDF format informs this belief.)

In addition, Image 10 included, in the mailed packet, its response to Lemorande's Request for the Production of Documents. This submission was within the required deadline. However, the generally non-responsive contents of that document are the subject of another motion to compel.

B: GENERALLY, AS TO THE CONTENT OF IMAGE 10'S RESPONSES

In its responses (I), Image 10 makes contradictory, pattern, general objections that transform its actual responses into useless or near useless information. For example, in **Item B** under 'General Objections', Respondent asserts that all of the Interrogatories are "*burdensome and designed to harass* rather than to serve any *legitimate discovery purpose*." [Emphasis added].

Petitioner notes that it seems inappropriate for Respondent to determine what is a '*legitimate discovery purpose*' in the absence of defining what would be legitimate. As to the request being 'burdensome', it would appear to Petitioner that all discovery requests carry some burden, and that 'harassment' would be evident in the nature of Petitioner's inquiries. Being standard business inquiries, relevant to Respondent's assertion of the maintenance of a common law trademark, it is absolutely unreasonable to typify Petitioner's inquiries as 'harassment'. The TTAB will, obviously, be the judge of that categoriza-

tion.

In **General Objection C**, Respondent finds the Interrogatories to be “*overbroad and not limited to a reasonable time period*”.

The only possible time period in this matter is that which has occurred since 1968 when the initial film was created. Respondent’s actions or inactions during that period are material and relevant to its proof of maintaining and policing a trademark during that period. In addition, Petitioner does, in fact, provide limits, breaking the period into units to assist Respondent in its responses.

General Objection D is even more concerning, suggesting that there is ‘*commercial sensitivity*’ to the information Respondent withholds. If such an objection were sustainable, virtually all relevant information in business litigation would be barred from discovery, vitiating any fair legal adjudication.

This response applies to a further objection made by Respondent in **General Objection D**, suggesting that discovery might disclose ‘*information which derives independent economic value from not being generally known*’ suggesting that discovery should only occur when the information is generally known [by the public]. To Petitioner, this assertion is ridiculous and, again, would make, if sustained, discovery near pointless.

Furthermore, Respondent states, in its general objections, that it would be damaged by revealing, through discovery, information that was ‘*acquired primarily through confidential research and development efforts by or on behalf of Opposer*’. Petitioner, in its interrogatories, is not seeking information as to the means and processes by which Respondent created its sole motion picture. Even if Petitioner were, it would be hard for Respondent to assert that valuable trade secrets were involved in the film’s 1968 production.

However, Petitioner is not making such a request; as the TTAB will see in its review, all the inquiries made in Petitioner's interrogatories pertain to either 1) the issuance (or non-issuance) by Respondent of licenses to third-parties, 2) the possible filing of trademark applications, or 3) the potential arms-length relationship between Respondent and those entities which have made the over 149 films using the title (or derivatives of) "Night Of The Living Dead" or the past 50 years.

Generally, in the case of all of Respondent's claims of secret information immune to discovery, Respondent fails to even attempt to state what requested information is not subject to protection under the Board's standing protective order.

C: RESPONDENT'S CLAIM OF ATTORNEY-CLIENT PRIVILEGE

In **General Objection E**, Respondent *objects to the Interrogatories to the extent they seek privileged information protected by the attorney-client privilege.*

The attorney/client privilege is not a complete protective bar to litigation pertaining to business transactions. If that were the case, almost all discovery of such information would be moot in business litigation, and only attorneys would be hired to perform administrative and management roles within modern business life. This is not the case.

As counsel for Image 10 should know, the attorney/client privilege generally attaches only when information is transmitted in anticipation of litigation or in business matters for which the advice of counsel is sought.

Image 10 claims **common law trademark rights** based on, presumably, business transactions concerning the Mark over the course of the last, approximately, 50 years. To claim that all records associated with these transactions are shielded by the attorney-client privilege is to make a mockery of law as it pertains to the normal course of day-to-day business dealings.

Even if it were proper to hide the information requested due to the attorney-client privilege, discovery rules require that, in such instances, a privilege log be produced.

No such privilege log has been produced, and it appears, based on Image 10's complete silence, that none is in the works. Moreover, it is unclear what documents might fall within this objection that are not subject to protection under the Board's standing protective order.

D: AS TO RESPONDENT'S CLAIM OF WORK-PRODUCT PRIVILEGE

Even more than a claim of attorney-client privilege, the work-product doctrine requires that the privilege generally only extend to 1) the personal opinions and strategies of an attorney in 2) anticipation of litigation.

It is possible that, in the course of doing business during its approximately two years of existence, Respondent was involved in litigation or pre-litigation matters pertinent to its maintenance of its purported common law mark, or other litigation. However, in order to protect such information from discovery, Image 10, once again, would need to provide a privilege log, with its attendant detail, to Petitioner in response to his proper and pertinent discovery requests. Also, as previously stated, it is unclear what documents might fall within this objection not already subject to protection under the Board's standing protective order.

E: AS TO PROTECTION OF 'PRIVACY' CONCERNS

In **Objection F**, Respondent objects based on a claim of a '*right to privacy*' in the disclosure of information relating to '*employees or customers of Opposer*'.

What? First of all, no interrogatory makes inquiries as to employees of Respondent. As stated previously, the interrogatories inquire as to the relationship status – by license or other agreement - between Image 10 and some of the 149 entities publically known to have created films or television programs with the title “Night of the Living Dead” or derivatives.

In addition, the Interrogatories primarily request information as to: 1) Image 10’s status as a going-concern, currently and historically, 2) its business revenues which might prove (or disprove) Image 10’s existence as an active film production company since 1968, 3) its activities pertaining activities with the USPTO as to trademark registration, 4) prior actions pertaining to the mark and/or Image 10’s commercial business, and 5) the possible relationship between Opposer and some of the entities which have used the title “Night Of The Living Dead” or its derivatives (Interrogatories 2 through 34).

F: AS TO THE NUMBER OF INTERROGATORIES

Finally, in Objection G, Respondent claims the number of interrogatories exceeds the limit for such requests.

They do not. It appears the Objection was made in bad faith so as to confuse or deceive the *in pro per* Petitioner.

G: AS TO SPECIFIC INTERROGATORIES

Interrogatory #1 asks that Image 10 “*identify separately all parties with an ownership right or claimed ownership right in the 1968 movie featuring the Mark identified in your Notice of Opposition.*”

It is not only fair but also a conscientious act by Petitioner to ensure that there are no other claimants to the Mark, especially under common law.

Interrogatory 43 requests an explanation as to *“why George Romero and John Russo agreed mutually to not use the title “NIGHT OF THE LIVING DEAD” for subsequent remakes and sequels.”*

In addition...

Interrogatory 44 asks to *explain why George Romero and John Russo agreed to bifurcate the title NIGHT OF THE LIVING DEAD, with George Romero subsequently solely using ‘NIGHT OF...’ only, and John Russo solely using “...THE LIVING DEAD” only for any later sequels, prequels or remakes.*

It seems obvious, at least to Petitioner, that such inquiries are necessary to ensure that Image 10 is the sole claimant to a common law mark, and also to possibly reveal actions or non-action taken by Image 10 and these possible claimants in the maintenance and policing of Image 10’s purported common law mark.

Pertaining to **Interrogatory 47**, Image 10 has previously asserted ongoing activities pertaining to film ‘conventions’ to support its claim of a common law trademark. Interrogatory 47 pertains to this, stating: *“Describe in detail (including dates and locations) all activities created, initiated by or participated in by Image Ten to promote the film NIGHT OF THE LIVING DEAD in ‘Night Of The Living Dead conventions’ as stated in paragraph 2 of Image Ten’s opposition complaint filed 3/29/2017.”*

This interrogatory seeks merely to obtain business information in support of Image 10’s ‘convention contention’ both in terms of frequency, geography, and dimension.

In **Interrogatory 52** (the final interrogatory), Petitioner asks to know the circumstances by which Image Ten recently acquired, by assignment, the registered trademark for

toys previously maintained by SphereWerx, LLC, including the consideration for such acquisition.

This acquisition occurred subsequent to the filing by Lemorande of his trademark application, and it seems, logically, to be a defensive action on the part of Image 10. Although, it is for toys, and not under the motion picture category sought by Lemorande, obviously information pertaining to such acquisition may be pertinent, or might lead to pertinent facts related to any claim Image10 would make as to ownership of a “Night Of The Living Dead” trademark, registered or by common law.

H: AS TO IMAGE 10’S RESPONSES

If we were in a bygone era, Image 10 might have created three rubbers stamps in order to respond to all of the Interrogatories. Given the use of computers and word-processing today, Image 10 has enjoyed the ease of ‘cut-and-paste’ procedures - efficient for Respondent but near useless for Petitioner and, likely, the Board.

The principle pattern response from Respondent is:

“Opposer incorporates the Preliminary Statement and General Objections set forth above. Opposer objects to the extent the interrogatory seeks information that is confidential and propriety business information and that such information is not relevant to the current proceeding. Opposer further objects as the interrogatory seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. In addition, the interrogatory is vague, ambiguous and unintelligible so as to make a response impossible without speculation as to its meaning.”

Responding to this pattern response, Petitioner would like to point out that:

- a) It is not up to Image 10 to determine relevance. Even if not relevant, information is discoverable if it might lead to discoverable information; and,
- b) The assertion of ‘vagueness, ambiguity’ and, most insultingly, ‘unintelligible’, is one that hopefully the Board will adjudicate in its consideration of this motion. Plain language is used throughout the interrogatories. All words are the ‘one dollar’ type, and dependent clauses are used at a minimum.

The above rubber-stamp, pattern response is used, without modification, for the entirety of **Interrogatories numbered 1 through 36**.

In Interrogatory 37, Petitioner asks that Respondent *‘Identify separately all Motion Pictures produced by You, the year of production and the owner of such Motion Picture.’*

In its answer, Respondent adds the following sentence to its pattern response to the prior 36 interrogatories: *“Opposer further objects to this interrogatory on grounds that it is compound and vague and ambiguous and the term ‘production’ is vague and ambiguous.”*

In response, Petitioner admits that it is compound, asking for both the name of productions and their years and ownership. However, actual good faith by Respondent would likely forgive the compoundness and answer appropriately.

Respondent uses this rubber stamp response also for **Interrogatories 47, 48 51 and 52**.

However, ‘production’ is a term commonly known, even by the general public, to designate a film – it is clearly not vague or ambiguous. Such an assertion would seem the lack of good faith or even effort on the part of Respondent.

Respondent rubber stamps **Interrogatory 38** with this same response.

In its response to **Interrogatory 39**, Respondent uses the same rubber stamp, but adds the sentence: “*Opposer further objects to this interrogatory on grounds that it is compound and vague and ambiguous and the term “**Opposition**” is vague and ambiguous.*”

Since the Opposition filed by Image 10 is what brings this matter before the Board, it seems incredibly disingenuous (and wasteful of time) for Respondent to suggest the term is ‘*vague and ambiguous*’.

In its response to **Interrogatory 40**, Respondent cuts-and-pastes the prior objections, adding only that the word ‘**Action**’ is ‘*vague and ambiguous*’. Being attorneys, one would assume Respondent’s counsel would understand ‘Action’, especially capitalized, would mean legal actions.

Reaching a level of near absurdity, Respondent in its response to **Interrogatory 41** (again, using the same pattern response) states that the term ‘*Explain*’ needs to be explained (specifically, that the word ‘*explain*’ is ‘*vague and ambiguous*’.) For the record, Respondent also, again, asserts that the word ‘*production*’ is ‘*vague and ambiguous*’.

Now, Respondent has a new rubber stamp, including the old but adding the need to have ‘explain’ explained. This stamp is used to reply to **Interrogatory 42 through 46, 49 and 50**.

I: ATTEMPTS TO RESOLVE

Petitioner has attempted to resolve this matter cordially and professionally, requesting not once but twice that Image 10 meet and confer (See Exhibits A and B). As of this date, there has been no response, either by email, letter, phone call or text. It has therefore become clear that these disputes cannot be resolved between the parties.

Petitioner admits the following is speculation, however, it appears, by the combination of Image 10's failure to provide any meaningful responses to this and the other two discovery requests propounded, in addition to its recent stone-cold silence, that there exists a complete absence of good faith by Image 10, constituting, in effect, a mockery of the discovery process. In addition, Image 10's lack of timely responsiveness (coupled with Image 10's recent silence in the entire matter) might even suggest a malicious attempt to box Petitioner out of his legal right to fair discovery within TTAB's required time frame.

Petitioner is *in pro per*. Perhaps in Image 10's mind this make him unimportant and disqualified to pursue his legal right to properly contest and adjudicate Image 10's opposition (which Image 10, of course, also has a right to pursue.) Petitioner has treated that Opposition with dignity, diligence and respect, and Petitioner will continue his efforts in the good faith belief that the USPTO does not view *in pro per* parties, and their respective rights, (especially as to a proper and complete discovery process, essential in all fair adjudication under due process) as a meaningless fiction and waste of everyone's time.

In a final note on this matter, as others have opined, trial by ambush is not allowed, and one who is opposed in a trademark dispute must necessarily know the factual basis for such opposition in order to properly plead its case. Such information, obviously, would have to be revealed at trial.

J: CERTIFICATION OF GOOD FAITH EFFORT TO RESOLVE DISPUTE

In accordance with Trademark Rule 2.120(e), Petitioner hereby certifies that he has made a good faith effort to resolve the issues presented in this motion. (See Exhibits

A and B.)

K: SUSPENSION PENDING RESOLUTION

With respect to the effect of a motion to compel discovery, the Trademark Rules of Practice provide:

When a party files a motion for an order to compel initial disclosure, expert testimony disclosure, or discovery, the case will be suspended by the Board with respect to all matters not germane to the motion.

37 C.F.R. § 2.120(e)(2).

Respectfully, Petitioner asks that this matter be suspended, and the trial dates extended and/or reset pending resolution of this motion.

CONCLUSION

For the forgoing reasons, Petitioner respectfully requests that the Board enter an order overruling Image 10's objections discussed above and requiring the production of real responses to Lemorande's Interrogatories, Set 1, by Image 10 within 21 days of the Order. In addition, the deadlines should be reset following resolution of this motion.

Dated: November 30, 2017

Respectfully submitted,

Rusty Lemorande
In Pro Per
1245 North Crescent Heights
Blvd.
Los Angeles, CA 90046
Telephone: (786) 600-4655

/Rusty Lemorande/
Rusty Lemorande.
In Pro Per

CERTIFICATE OF SERVICE AND FILING

I hereby certify that a copy of the foregoing PETITIONER'S MOTION TO COMPEL DISCOVERY was served on counsel for Image 10 LLC by e- mailing said copy, as agreed by counsel, on December 3, 2017, to the following email address: Michael Meeks. at mmeeks@buchalter.com, Farah Bhatti at fbhatti@buchalter.com, and hblan@buchalter.com

/Rusty Lemorande/

Rusty Lemorande

Serial No: 87090468
Opposition Number: 91233690
Defendant (Lemorande's) Exhibit

EXHIBIT A



Rusty Lemorande <lemorande@gmail.com>

Meet and Confer

Rusty Lemorande <lemorande@gmail.com>
To: "Bhatti, Farah P." <fbhatti@buchalter.com>

Mon, Nov 27, 2017 at 7:31 PM

Hello:

I'd like to schedule a call so we can confer about your discovery responses. I feel they are, for the most part, non productive, providing little actual discovery.

You've previously made assertions as to common law uses by your client. I want to learn about these uses and properly assess my position going forward. However, with no actual evidence from you, and as the result of other responses by you that I find, frankly, evasive, I am left in the dark. And I believe the USPTO will be, too.

I've also made inquiries, in good faith, as to the reasons for your delays, but have received no actual response as far as I know.

If I am wrong as to any of the above, perhaps you can enlighten me. I am very open to be informed.

May we speak soon to discuss this and see if we can work out a remedy to this matter?

Please let me know if you are willing and when would be a good time for you.

Thank you.

Rusty Lemorande

--

Sent from Gmail Mobile Tel [323 309 6146](tel:3233096146)

EXHIBIT B



Rusty Lemorande <lemorande@gmail.com>

Meet and Confer

Rusty Lemorande <lemorande@gmail.com>

Tue, Nov 28, 2017 at 4:31 PM

To: "Bhatti, Farah P." <fbhatti@buchalter.com>, "Meeks, Michael L." <mmeeks@buchalter.com>

Sending again. Please respond.

RL

On Mon, Nov 27, 2017 at 7:31 PM, Rusty Lemorande <lemorande@gmail.com> wrote:

Hello:

I'd like to schedule a call so we can confer about your discovery responses. I feel they are, for the most part, non productive, providing little actual discovery.

You've previously made assertions as to common law uses by your client. I want to learn about these uses and properly assess my position going forward. However, with no actual evidence from you, and as the result of other responses by you that I find, frankly, evasive, I am left in the dark. And I believe the USPTO will be, too.

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May we speak soon to discuss this and see if we can work out a remedy to this matter?

Please let me know if you are willing and when would be a good time for you.

Thank you.

Rusty Lemorande

--

Sent from Gmail Mobile Tel [323 309 6146](tel:3233096146)

--

RH Lemorande
P.O. Box 46771
LA, CA 90046
tel: [323 309 6146](tel:3233096146)

EXHIBIT C



Rusty Lemorande <lemorande@gmail.com>

RE: NIGHT OF THE LIVING DEAD - Answers to Interrogatories [IWOV-BN.FID1193774]

Rusty Lemorande <lemorande@gmail.com>

Tue, Nov 7, 2017 at 7:46 PM

To: "Blan, Henry" <hblan@buchalter.com>

Cc: "Bhatti, Farah P." <fbhatti@buchalter.com>, "Levinson, Lisa" <llevinson@buchalter.com>, "Meeks, Michael L." <mmeeks@buchalter.com>, ipdocket <ipdocket@buchalter.com>

Hello

I remain confused. According to the email notice (of the receipt error) you sent me today (below), you attempted to send the answers to interogs today on November 7th. They were due, as you know, no later than Oct 25th.

Am I misinterpreting the notice you sent below? If not, please advise of the date you originally attempted to email me the answers (with a copy of that email), and state why the delay.

Thank you.

RL

----- Forwarded message -----

From: BNFY Administrator <Administrator2@buchalter.com>

To: "Blan, Henry" <hblan@buchalter.com>

Cc:

Bcc:

Date: Tue, 7 Nov 2017 18:42:02 +0000

Subject: [Postmaster] Email Delivery Failure

This is a delivery failure notification message indicating that an email you addressed to email address :

-- lemorande@gmail.com

could not be delivered. The problem appears to be :

-- Recipient email server rejected the message

Additional information follows :

-- 5.2.3 Your message exceeded Google's message size limits. Please visit <https://support.google.com/mail/?p=MaxSizeError> to view our size guidelines. i6si1757264qka.221 - smtp

This condition occurred after 1 attempt(s) to deliver over a period of 0 hour(s).

If you sent the email to multiple recipients, you will receive one of these messages for each one which failed delivery, otherwise they have been sent.

On Tue, Nov 7, 2017 at 10:56 AM Blan, Henry <hblan@buchalter.com> wrote:

[Quoted text hidden]

--

[Quoted text hidden]

EXHIBIT D



Rusty Lemorande <lemorande@gmail.com>

NIGHT OF THE LIVING DEAD - Answers to Interrogatories

Rusty Lemorande <lemorande@gmail.com>

Mon, Nov 6, 2017 at 6:34 PM

To: "Farah P." <fbhatti@buchalter.com>, "Michael L." <mmeeks@buchalter.com>, ipdocket <ipdocket@buchalter.com>, Lisa <llevinson@buchalter.com>, "Blan, Henry" <hblan@buchalter.com>

Dear Ms. Bhatti

I believe answers to the first set of interrogatories sent were due on October 25th.

1) Do you intend to respond and, if so, 2) why are they late?

Thank you.

Sincerely

R Lemorande

EXHIBIT E



Rusty Lemorande <lemorande@gmail.com>

RE: NIGHT OF THE LIVING DEAD - Answers to Interrogatories [IWOV-BN.FID1193774]

Blan, Henry <hblan@buchalter.com>

Tue, Nov 7, 2017 at 10:56 AM

To: Rusty Lemorande <lemorande@gmail.com>, "Bhatti, Farah P." <fbhatti@buchalter.com>, "Meeks, Michael L." <mmeeks@buchalter.com>, ipdocket <ipdocket@buchalter.com>, "Levinson, Lisa" <llevinson@buchalter.com>

Dear Mr. Lemorande:

Please note the email I sent with the responses was unsuccessful. We received an email of email delivery failure stating the recipient email server rejected our email.

We have mailed out the responses via first class mail.

Thank you.

Henry Blan
Legal Assistant
Buchalter, A Professional Corporation

18400 Von Karman Avenue, Suite 800 | Irvine, CA 92612-0514
Direct Dial: (949) 224-6233 | Switchboard: (949) 760-1121
Email: hblan@buchalter.com | www.buchalter.com

From: Rusty Lemorande [mailto:lemorande@gmail.com]
Sent: Monday, November 06, 2017 6:34 PM
To: Bhatti, Farah P.; Meeks, Michael L.; ipdocket; Levinson, Lisa; Blan, Henry
Subject: NIGHT OF THE LIVING DEAD - Answers to Interrogatories

Dear Ms. Bhatti

I believe answers to the first set of interrogatories sent were due on October 25th.

1) Do you intend to respond and, if so, 2) why are they late?

Thank you.

Sincerely

R Lemorande

Notice To Recipient: This e-mail is meant for only the intended recipient of the transmission, and may be a communication privileged by law. If you received this e-mail in error, any review, use, dissemination, distribution, or copying of this e-mail is strictly prohibited. Please notify us immediately of the error by return e-mail and please delete this message and any and all duplicates of this message from your system. Thank you in advance for your cooperation. For additional policies governing this e-mail, please see <http://www.buchalter.com/about/firm-policies/>.

EXHIBIT F



Rusty Lemorande <lemorande@gmail.com>

RE: NIGHT OF THE LIVING DEAD - Answers to Interrogatories [IWOV-BN.FID1193774]

Rusty Lemorande <lemorande@gmail.com>

Tue, Nov 7, 2017 at 1:16 PM

To: "Blan, Henry" <hblan@buchalter.com>

Cc: "Bhatti, Farah P." <fbhatti@buchalter.com>, "Levinson, Lisa" <llevinson@buchalter.com>, "Meeks, Michael L." <mmeeks@buchalter.com>, ipdocket <ipdocket@buchalter.com>

Hello

Could you please send me a copy of the rejection email?

Thank you.

RL

[Quoted text hidden]

--

Sent from Gmail Mobile Tel [323 309 6146](tel:3233096146)

EXHIBIT G



Rusty Lemorande <lemorande@gmail.com>

RE: NIGHT OF THE LIVING DEAD - Answers to Interrogatories [IWOV-BN.FID1193774]

Blan, Henry <hblan@buchalter.com>

Tue, Nov 7, 2017 at 1:29 PM

To: Rusty Lemorande <lemorande@gmail.com>

Cc: "Bhatti, Farah P." <fbhatti@buchalter.com>, "Levinson, Lisa" <llevinson@buchalter.com>, "Meeks, Michael L." <mmeeks@buchalter.com>, ipdocket <ipdocket@buchalter.com>

The email with responses was rejected due to the size of your inbox. See below.

could not be delivered. The problem appears to be :

-- Recipient email server rejected the message

Additional information follows :

-- 5.2.3 Your message exceeded Google's message size limits. Please visit <https://support.google.com/mail/?p=MaxSizeError> to view our size guidelines. i6si1757264qka.221 - gsmtip

Henry Blan
Legal Assistant
Buchalter, A Professional Corporation

18400 Von Karman Avenue, Suite 800 | Irvine, CA 92612-0514
Direct Dial: (949) 224-6233 | Switchboard: (949) 760-1121
Email: hblan@Buchalter.com | www.buchalter.com

From: Rusty Lemorande [mailto:lemorande@gmail.com]

Sent: Tuesday, November 07, 2017 1:17 PM

To: Blan, Henry

Cc: Bhatti, Farah P.; Levinson, Lisa; Meeks, Michael L.; ipdocket

Subject: Re: NIGHT OF THE LIVING DEAD - Answers to Interrogatories [IWOV-BN.FID1193774]

[Quoted text hidden]

[Quoted text hidden]

----- Forwarded message -----

From: BNFY Administrator <Administrator2@buchalter.com>

To: "Blan, Henry" <hblan@buchalter.com>

Cc:

Bcc:

Date: Tue, 7 Nov 2017 18:42:02 +0000

Subject: [Postmaster] Email Delivery Failure

This is a delivery failure notification message indicating that an email you addressed to email address :

-- lemorande@gmail.com

could not be delivered. The problem appears to be :

-- Recipient email server rejected the message

Additional information follows :

-- 5.2.3 Your message exceeded Google's message size limits. Please visit <https://support.google.com/mail/?p=MaxSizeError> to view our size guidelines. i6si1757264qka.221 - gsmtip

This condition occurred after 1 attempt(s) to deliver over a period of 0 hour(s).

If you sent the email to multiple recipients, you will receive one of these messages for each one which failed delivery, otherwise they have been sent.

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2K

EXHIBIT H

EXHIBIT H

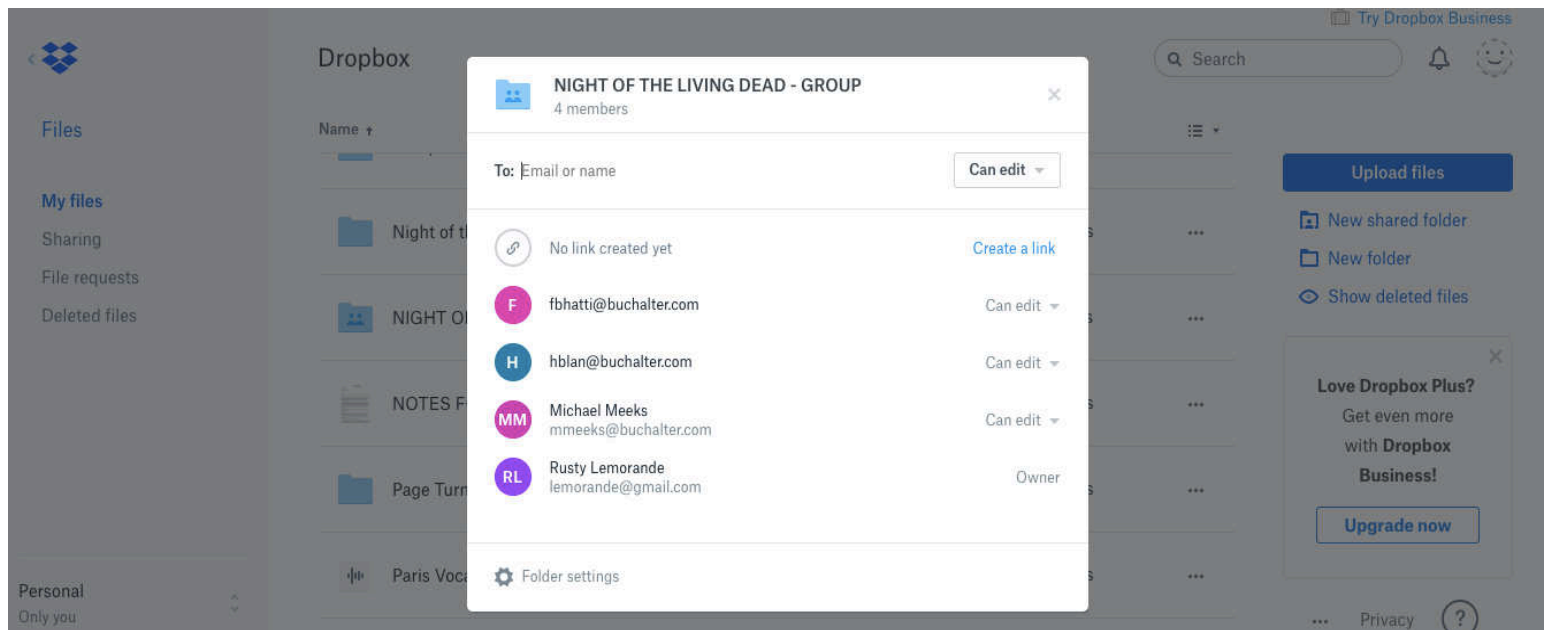


EXHIBIT I

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Image Ten, Inc. Opposer, v. Rusty Ralph Lemorande Applicant.	Opposition No.: 91233690 OPPOSER IMAGE TEN, INC.'S RESPONSE TO APPLICANT RUSTY RALPH LEMORANDE'S FIRST SET OF INTERROGATORIES
--	---

PROPOUNDING PARTY: APPLICANT RUSTY RALPH LEMORANDE
RESPONDING PARTY: OPPOSER IMAGE TEN, INC.
SET NO.: ONE (1)

OPPOSER'S RESPONSE TO APPLICANT'S INTERROGATORIES (SET 1)

Pursuant to Rule 33 of the Federal Rules of Civil Procedure, and Rule 2.120 of the Trademark Rules of Practice, Opposer Image Ten, Inc. ("Opposer") hereby responds to the First Set of Interrogatories propounded by Rusty Ralph Lemorande ("Lemorande"), as follows:

PRELIMINARY STATEMENT

1. Opposer's responses are based upon its present knowledge, information and belief. Opposer has not completed its investigation and discovery of the facts related to this proceeding. Further discovery, independent investigation, legal research and analysis may supply additional facts and/or add meaning to known facts. Without acknowledging any obligation to do so, except as required by law, Opposer reserves the right to amend, supplement, correct or clarify its responses to the Interrogatories when and if new or additional information becomes available.
2. Opposer reserves the right to object to the use and/or admissibility of any of its responses to the Interrogatories at the trial of this action, at any other proceeding, or in any other action or proceeding.

3. Nothing contained in these responses should be construed as an admission relating to the existence or non-existence of any fact, and no response is to be considered an admission respective of the relevance or admissibility of any information contained therein.

4. The following responses are submitted without prejudice to Opposer's right to product evidence of any subsequently discovered fact or facts which Opposer may later recall or discover. The responses contained herein are made in a good-faith effort to supply as much factual information as is presently known, but in no way prejudices Opposer's ability to engage in further discovery, research or analysis.

5. Opposer incorporated by reference this Preliminary Statement and the following General Objections in each and every response set forth below.

GENERAL OBJECTIONS

A. Opposer objects to the Interrogatories propounded by Lemorande to the extent they seek information that is neither relevant to the subject matter of this action nor reasonably calculated to lead to the discovery of admissible evidence with respect to the issues in this action.

B. Opposer objects to the Interrogatories as burdensome and as designed, in whole or in part, to harass rather than to serve any legitimate discovery purpose.

C. Opposer objects to the Interrogatories as overbroad and not limited to a reasonable time period.

D. Opposer objects to the Interrogatories as to the extent they seek information of a commercially sensitive nature. Revealing such information would substantially and irreparably injure Opposer by revealing information which derives independent economic value from not being generally known or which has been acquired primarily through confidential research and development efforts by or on behalf of Opposer.

E. Opposer objects to the Interrogatories to the extent they seek privileged information protected by the attorney-client privilege or the attorney-work product doctrine. Such privileged information includes, but is not limited to, the following:

- a. Information which constitutes, reflects, refers to or relates to confidential communications between officers, directors or employees of Opposer and counsel;
- b. Information which constitutes, reflects, refers to or relates to the

impressions, conclusions, opinions or mental process of counsel, their agents or employees.

F. Opposer objects to the Interrogatories to the extent they seek information relating to employees or customers of Opposer, the disclosure of which would invade their right to privacy.

G. Opposer objects to the Interrogatories to the extent Lemorande has exceeded the limit for Interrogatory Requests.

INTERROGATORY NO. 1:

Identify separately all licenses for the Mark or variations of the Mark that identify You as a licensor.

RESPONSE TO INTERROGATORY NO. 1:

Opposer incorporates the Preliminary Statement and General Objections set forth above. Opposer objects to the extent the interrogatory seeks information that is confidential and proprietary business information and that such information is not relevant to the current proceeding. Opposer further objects as the interrogatory seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. In addition, the interrogatory is vague, ambiguous and unintelligible so as to make a response impossible without speculation as to its meaning.

INTERROGATORY NO. 2:

Identify separately all licenses for the Mark or variations of the Mark that identify You as a licensee.

RESPONSE TO INTERROGATORY NO. 2:

Opposer incorporates the Preliminary Statement and General Objections set forth above. Opposer objects to the extent the interrogatory seeks information that is confidential and proprietary business information and that such information is not relevant to the current proceeding. Opposer further objects as the interrogatory seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. In addition, the interrogatory is vague, ambiguous and unintelligible so as to make a response impossible without speculation as to its meaning.

INTERROGATORY NO. 3:

Identify any relationship between You and Matt Cloude.

RESPONSE TO INTERROGATORY NO. 3:

Opposer incorporates the Preliminary Statement and General Objections set forth above. Opposer objects to the extent the interrogatory seeks information that is confidential and proprietary business information and that such information is not relevant to the current proceeding. Opposer also objects to this Interrogatory on grounds that the term “relationship” is vague and ambiguous. Opposer further objects as the interrogatory seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. In addition, the interrogatory is vague, ambiguous and unintelligible so as to make a response impossible without speculation as to its meaning.

INTERROGATORY NO. 4:

Interrogatory No. 4: Identify any relationship between You and Roger Connors.

RESPONSE TO INTERROGATORY NO. 4:

Opposer incorporates the Preliminary Statement and General Objections set forth above. Opposer objects to the extent the interrogatory seeks information that is confidential and proprietary business information and that such information is not relevant to the current proceeding. Opposer also objects to this Interrogatory on grounds that the term "relationship" is vague and ambiguous. Opposer further objects as the interrogatory seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. In addition, the interrogatory is vague, ambiguous and unintelligible so as to make a response impossible without speculation as to its meaning.

INTERROGATORY NO. 5:

Identify any relationship between You and Ray Austin.

RESPONSE TO INTERROGATORY NO. 5:

Opposer incorporates the Preliminary Statement and General Objections set forth above. Opposer objects to the extent the interrogatory seeks information that is confidential and proprietary business information and that such information is not relevant to the current proceeding. Opposer also objects to this Interrogatory on grounds that the term "relationship" is vague and ambiguous. Opposer further objects as the interrogatory seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. In addition, the interrogatory is vague, ambiguous and unintelligible so as to make a response impossible without speculation as to its meaning.

INTERROGATORY NO. 6:

Identify any relationship between You and Albert Cochran.

RESPONSE TO INTERROGATORY NO. 6:

Opposer incorporates the Preliminary Statement and General Objections set forth above. Opposer objects to the extent the interrogatory seeks information that is confidential and proprietary business information and that such information is not relevant to the current proceeding. Opposer also objects to this Interrogatory on grounds that the term “relationship” is vague and ambiguous. Opposer further objects as the interrogatory seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. In addition, the interrogatory is vague, ambiguous and unintelligible so as to make a response impossible without speculation as to its meaning.

INTERROGATORY NO. 7:

Identify any relationship between You and Mike Schneider.

RESPONSE TO INTERROGATORY NO. 7:

Opposer incorporates the Preliminary Statement and General Objections set forth above. Opposer objects to the extent the interrogatory seeks information that is confidential and proprietary business information and that such information is not relevant to the current proceeding. Opposer also objects to this Interrogatory on grounds that the term “relationship” is vague and ambiguous. Opposer further objects as the interrogatory seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. In addition, the interrogatory is vague, ambiguous and unintelligible so as to make a response impossible without speculation as to its meaning.

INTERROGATORY NO. 8:

Identify any relationship between You and Lewis Guthrie.

RESPONSE TO INTERROGATORY NO. 8:

Opposer incorporates the Preliminary Statement and General Objections set forth above. Opposer objects to the extent the interrogatory seeks information that is confidential and proprietary business information and that such information is not relevant to the current proceeding. Opposer also objects to this Interrogatory on grounds that the term “relationship” is vague and ambiguous. Opposer further objects as the interrogatory seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. In addition, the interrogatory is vague, ambiguous and unintelligible so as to make a response impossible without speculation as to its meaning.

INTERROGATORY NO. 9:

Identify any relationship between You and James Plumb.

RESPONSE TO INTERROGATORY NO. 9:

Opposer incorporates the Preliminary Statement and General Objections set forth above. Opposer objects to the extent the interrogatory seeks information that is confidential and proprietary business information and that such information is not relevant to the current proceeding. Opposer also objects to this Interrogatory on grounds that the term “relationship” is vague and ambiguous. Opposer further objects as the interrogatory seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. In addition, the interrogatory is vague, ambiguous and unintelligible so as to make a response impossible without speculation as to its meaning.

INTERROGATORY NO. 10:

Identify any relationship between You and Joshua Dickinson.

RESPONSE TO INTERROGATORY NO. 10:

Opposer incorporates the Preliminary Statement and General Objections set forth above. Opposer objects to the extent the interrogatory seeks information that is confidential and proprietary business information and that such information is not relevant to the current proceeding. Opposer also objects to this Interrogatory on grounds that the term “relationship” is vague and ambiguous. Opposer further objects as the interrogatory seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. In addition, the interrogatory is vague, ambiguous and unintelligible so as to make a response impossible without speculation as to its meaning.

INTERROGATORY NO. 11:

Identify any relationship between You and Zebediah De Soto.

RESPONSE TO INTERROGATORY NO. 11:

Opposer incorporates the Preliminary Statement and General Objections set forth above. Opposer objects to the extent the interrogatory seeks information that is confidential and proprietary business information and that such information is not relevant to the current proceeding. Opposer also objects to this Interrogatory on grounds that the term “relationship” is vague and ambiguous. Opposer further objects as the interrogatory seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. In

addition, the interrogatory is vague, ambiguous and unintelligible so as to make a response impossible without speculation as to its meaning.

INTERROGATORY NO. 12:

Identify any relationship between You and Krisztian Majdik.

RESPONSE TO INTERROGATORY NO. 12:

Opposer incorporates the Preliminary Statement and General Objections set forth above. Opposer objects to the extent the interrogatory seeks information that is confidential and proprietary business information and that such information is not relevant to the current proceeding. Opposer also objects to this Interrogatory on grounds that the term “relationship” is vague and ambiguous. Opposer further objects as the interrogatory seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. In addition, the interrogatory is vague, ambiguous and unintelligible so as to make a response impossible without speculation as to its meaning.

INTERROGATORY NO. 13:

Identify any relationship between You and Mike Schneider.

RESPONSE TO INTERROGATORY NO. 13:

Opposer incorporates the Preliminary Statement and General Objections set forth above. Opposer objects to the extent the interrogatory seeks information that is confidential and proprietary business information and that such information is not relevant to the current proceeding. Opposer also objects to this Interrogatory on grounds that the term “relationship” is vague and ambiguous. Opposer further objects as the interrogatory seeks information that is

neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. In addition, the interrogatory is vague, ambiguous and unintelligible so as to make a response impossible without speculation as to its meaning.

INTERROGATORY NO. 14:

Identify any relationship between You and Stu Dodge.

RESPONSE TO INTERROGATORY NO. 14:

Opposer incorporates the Preliminary Statement and General Objections set forth above. Opposer objects to the extent the interrogatory seeks information that is confidential and proprietary business information and that such information is not relevant to the current proceeding. Opposer also objects to this Interrogatory on grounds that the term “relationship” is vague and ambiguous. Opposer further objects as the interrogatory seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. In addition, the interrogatory is vague, ambiguous and unintelligible so as to make a response impossible without speculation as to its meaning.

INTERROGATORY NO. 15:

Identify any relationship between You and Robert Lucas.

RESPONSE TO INTERROGATORY NO. 15:

Opposer incorporates the Preliminary Statement and General Objections set forth above. Opposer objects to the extent the interrogatory seeks information that is confidential and proprietary business information and that such information is not relevant to the current proceeding. Opposer also objects to this Interrogatory on grounds that the term “relationship” is

vague and ambiguous. Opposer further objects as the interrogatory seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. In addition, the interrogatory is vague, ambiguous and unintelligible so as to make a response impossible without speculation as to its meaning.

INTERROGATORY NO. 16:

Identify any relationship between You and Joe D'Amatz.

RESPONSE TO INTERROGATORY NO. 16:

Opposer incorporates the Preliminary Statement and General Objections set forth above. Opposer objects to the extent the interrogatory seeks information that is confidential and proprietary business information and that such information is not relevant to the current proceeding. Opposer also objects to this Interrogatory on grounds that the term "relationship" is vague and ambiguous. Opposer further objects as the interrogatory seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. In addition, the interrogatory is vague, ambiguous and unintelligible so as to make a response impossible without speculation as to its meaning.

INTERROGATORY NO. 17:

Identify any relationship between You and Jeff Broadstreet.

RESPONSE TO INTERROGATORY NO. 17:

Opposer incorporates the Preliminary Statement and General Objections set forth above. Opposer objects to the extent the interrogatory seeks information that is confidential and proprietary business information and that such information is not relevant to the current

proceeding. Opposer also objects to this Interrogatory on grounds that the term “relationship” is vague and ambiguous. Opposer further objects as the interrogatory seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. In addition, the interrogatory is vague, ambiguous and unintelligible so as to make a response impossible without speculation as to its meaning.

INTERROGATORY NO. 18:

Identify any relationship between You and Brian Yuzna.

RESPONSE TO INTERROGATORY NO. 18:

Opposer incorporates the Preliminary Statement and General Objections set forth above. Opposer objects to the extent the interrogatory seeks information that is confidential and proprietary business information and that such information is not relevant to the current proceeding. Opposer also objects to this Interrogatory on grounds that the term “relationship” is vague and ambiguous. Opposer further objects as the interrogatory seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. In addition, the interrogatory is vague, ambiguous and unintelligible so as to make a response impossible without speculation as to its meaning.

INTERROGATORY NO. 19:

Identify any relationship between You and Ken Wiederhorn.

RESPONSE TO INTERROGATORY NO. 19:

Opposer incorporates the Preliminary Statement and General Objections set forth above. Opposer objects to the extent the interrogatory seeks information that is confidential and

proprietary business information and that such information is not relevant to the current proceeding. Opposer also objects to this Interrogatory on grounds that the term “relationship” is vague and ambiguous. Opposer further objects as the interrogatory seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. In addition, the interrogatory is vague, ambiguous and unintelligible so as to make a response impossible without speculation as to its meaning.

INTERROGATORY NO. 20:

Identify any relationship between You and Ellory Elkayem.

RESPONSE TO INTERROGATORY NO. 20:

Opposer incorporates the Preliminary Statement and General Objections set forth above. Opposer objects to the extent the interrogatory seeks information that is confidential and proprietary business information and that such information is not relevant to the current proceeding. Opposer also objects to this Interrogatory on grounds that the term “relationship” is vague and ambiguous. Opposer further objects as the interrogatory seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. In addition, the interrogatory is vague, ambiguous and unintelligible so as to make a response impossible without speculation as to its meaning.

INTERROGATORY NO. 21:

Identify any relationship between You and Gregory Morin.

RESPONSE TO INTERROGATORY NO. 21:

Opposer incorporates the Preliminary Statement and General Objections set forth above. Opposer objects to the extent the interrogatory seeks information that is confidential and proprietary business information and that such information is not relevant to the current proceeding. Opposer also objects to this Interrogatory on grounds that the term "relationship" is vague and ambiguous. Opposer further objects as the interrogatory seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. In addition, the interrogatory is vague, ambiguous and unintelligible so as to make a response impossible without speculation as to its meaning.

INTERROGATORY NO. 22:

Identify any relationship between You and Jonathan McDevitt.

RESPONSE TO INTERROGATORY NO. 22:

Opposer incorporates the Preliminary Statement and General Objections set forth above. Opposer objects to the extent the interrogatory seeks information that is confidential and proprietary business information and that such information is not relevant to the current proceeding. Opposer also objects to this Interrogatory on grounds that the term "relationship" is vague and ambiguous. Opposer further objects as the interrogatory seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. In addition, the interrogatory is vague, ambiguous and unintelligible so as to make a response impossible without speculation as to its meaning.

INTERROGATORY NO. 23:

Identify any relationship between You and Shalena Oxley.

RESPONSE TO INTERROGATORY NO. 23:

Opposer incorporates the Preliminary Statement and General Objections set forth above. Opposer objects to the extent the interrogatory seeks information that is confidential and proprietary business information and that such information is not relevant to the current proceeding. Opposer also objects to this Interrogatory on grounds that the term "relationship" is vague and ambiguous. Opposer further objects as the interrogatory seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. In addition, the interrogatory is vague, ambiguous and unintelligible so as to make a response impossible without speculation as to its meaning.

INTERROGATORY NO. 24:

Identify any relationship between You and Rich P. Matthews.

RESPONSE TO INTERROGATORY NO. 24:

Opposer incorporates the Preliminary Statement and General Objections set forth above. Opposer objects to the extent the interrogatory seeks information that is confidential and proprietary business information and that such information is not relevant to the current proceeding. Opposer also objects to this Interrogatory on grounds that the term "relationship" is vague and ambiguous. Opposer further objects as the interrogatory seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. In addition, the interrogatory is vague, ambiguous and unintelligible so as to make a response impossible without speculation as to its meaning.

INTERROGATORY NO. 25:

Identify any relationship between You and Roman Soni.

RESPONSE TO INTERROGATORY NO. 25:

Opposer incorporates the Preliminary Statement and General Objections set forth above. Opposer objects to the extent the interrogatory seeks information that is confidential and proprietary business information and that such information is not relevant to the current proceeding. Opposer also objects to this Interrogatory on grounds that the term “relationship” is vague and ambiguous. Opposer further objects as the interrogatory seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. In addition, the interrogatory is vague, ambiguous and unintelligible so as to make a response impossible without speculation as to its meaning.

INTERROGATORY NO. 26:

Identify any relationship between You and Nicholas Humphries.

RESPONSE TO INTERROGATORY NO. 26:

Opposer incorporates the Preliminary Statement and General Objections set forth above. Opposer objects to the extent the interrogatory seeks information that is confidential and proprietary business information and that such information is not relevant to the current proceeding. Opposer also objects to this Interrogatory on grounds that the term “relationship” is vague and ambiguous. Opposer further objects as the interrogatory seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. In addition, the interrogatory is vague, ambiguous and unintelligible so as to make a response impossible without speculation as to its meaning.

INTERROGATORY NO. 27:

Identify any relationship between You and the production company for MISLEAD:
NIGHT OF THE LIVING DEAD.

RESPONSE TO INTERROGATORY NO. 27:

Opposer incorporates the Preliminary Statement and General Objections set forth above. Opposer objects to the extent the interrogatory seeks information that is confidential and proprietary business information and that such information is not relevant to the current proceeding. Opposer also objects to this Interrogatory on grounds that the term “relationship” is vague and ambiguous. Opposer further objects as the interrogatory seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. In addition, the interrogatory is vague, ambiguous and unintelligible so as to make a response impossible without speculation as to its meaning.

INTERROGATORY NO. 28:

Identify any relationship between You and Michael Kesler.

RESPONSE TO INTERROGATORY NO. 28:

Opposer incorporates the Preliminary Statement and General Objections set forth above. Opposer objects to the extent the interrogatory seeks information that is confidential and proprietary business information and that such information is not relevant to the current proceeding. Opposer also objects to this Interrogatory on grounds that the term “relationship” is vague and ambiguous. Opposer further objects as the interrogatory seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. In

addition, the interrogatory is vague, ambiguous and unintelligible so as to make a response impossible without speculation as to its meaning.

INTERROGATORY NO. 29:

Identify any relationship between You and Anna Humphries.

RESPONSE TO INTERROGATORY NO. 29:

Opposer incorporates the Preliminary Statement and General Objections set forth above. Opposer objects to the extent the interrogatory seeks information that is confidential and proprietary business information and that such information is not relevant to the current proceeding. Opposer also objects to this Interrogatory on grounds that the term “relationship” is vague and ambiguous. Opposer further objects as the interrogatory seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. In addition, the interrogatory is vague, ambiguous and unintelligible so as to make a response impossible without speculation as to its meaning.

INTERROGATORY NO. 30:

Identify any relationship between You and Steve Look.

RESPONSE TO INTERROGATORY NO. 30:

Opposer incorporates the Preliminary Statement and General Objections set forth above. Opposer objects to the extent the interrogatory seeks information that is confidential and proprietary business information and that such information is not relevant to the current proceeding. Opposer also objects to this Interrogatory on grounds that the term “relationship” is vague and ambiguous. Opposer further objects as the interrogatory seeks information that is

neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. In addition, the interrogatory is vague, ambiguous and unintelligible so as to make a response impossible without speculation as to its meaning.

INTERROGATORY NO. 31:

Identify the total annual gross revenue You have received from the conduct of entertainment media production for each of the past five years.

RESPONSE TO INTERROGATORY NO. 31:

Opposer incorporates the Preliminary Statement and General Objections set forth above. Opposer objects to the extent the interrogatory seeks information that is confidential and proprietary business information and that such information is not relevant to the current proceeding. Opposer also objects to this Interrogatory on grounds that the terms “conduct of entertainment media production” is vague and ambiguous. Opposer further objects as the interrogatory seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. In addition, the interrogatory is vague, ambiguous and unintelligible so as to make a response impossible without speculation as to its meaning.

INTERROGATORY NO. 32:

Identify the total annual gross revenue You have received from your use or licensing of the Mark for the production of a Motion Picture in the last 10 years.

RESPONSE TO INTERROGATORY NO. 32:

Opposer incorporates the Preliminary Statement and General Objections set forth above. Opposer objects to the extent the interrogatory seeks information that is confidential and

proprietary business information and that such information is not relevant to the current proceeding. Opposer further objects to this interrogatory on grounds that it is compound and vague and ambiguous and the term “production” is vague and ambiguous. Opposer further objects as the interrogatory seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. In addition, the interrogatory is vague, ambiguous and unintelligible so as to make a response impossible without speculation as to its meaning.

INTERROGATORY NO. 33:

Identify the title of any and all Motion Pictures You produced in the last 10 years.

RESPONSE TO INTERROGATORY NO. 33:

Opposer incorporates the Preliminary Statement and General Objections set forth above. Opposer objects to the extent the interrogatory seeks information that is confidential and proprietary business information and that such information is not relevant to the current proceeding. Opposer further objects to this interrogatory on grounds that it is compound and vague and ambiguous and the term “produced” is vague and ambiguous. Opposer further objects as the interrogatory seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. In addition, the interrogatory is vague, ambiguous and unintelligible so as to make a response impossible without speculation as to its meaning.

INTERROGATORY NO. 34:

Identify any revenue generating activity regarding the Mark that You have engaged in during the last 10 years identified on a year by year basis.

RESPONSE TO INTERROGATORY NO. 34:

Opposer incorporates the Preliminary Statement and General Objections set forth above. Opposer objects to the extent the interrogatory seeks information that is confidential and proprietary business information and that such information is not relevant to the current proceeding. Opposer further objects as the interrogatory seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. In addition, the interrogatory is vague, ambiguous and unintelligible so as to make a response impossible without speculation as to its meaning.

INTERROGATORY NO. 35:

Identify any use of the Mark for any commercial purpose by You in the last 10 years by year and nature of such use.

RESPONSE TO INTERROGATORY NO. 35:

Opposer incorporates the Preliminary Statement and General Objections set forth above. Opposer objects to the extent the interrogatory seeks information that is confidential and proprietary business information and that such information is not relevant to the current proceeding. Opposer further objects as the interrogatory seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. In addition, the interrogatory is vague, ambiguous and unintelligible so as to make a response impossible without speculation as to its meaning.

INTERROGATORY NO. 36:

Identify separately all incidents of media coverage in the last 10 years that associates the phrase NIGHT OF THE LIVING DEAD with You.

RESPONSE TO INTERROGATORY NO. 36:

Opposer incorporates the Preliminary Statement and General Objections set forth above. Opposer objects to the extent the interrogatory seeks information that is confidential and proprietary business information and that such information is not relevant to the current proceeding. Opposer further objects as the interrogatory seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. In addition, the interrogatory is vague, ambiguous and unintelligible so as to make a response impossible without speculation as to its meaning.

INTERROGATORY NO. 37:

Identify separately all Motion Pictures produced by You, the year of production and the owner of such Motion Picture.

RESPONSE TO INTERROGATORY NO. 37:

Opposer incorporates the Preliminary Statement and General Objections set forth above. Opposer objects to the extent the interrogatory seeks information that is confidential and proprietary business information and that such information is not relevant to the current proceeding. Opposer further objects to this interrogatory on grounds that it is compound and vague and ambiguous and the term "production" is vague and ambiguous. Opposer further objects as the interrogatory seeks information that is neither relevant nor reasonably calculated to

lead to the discovery of admissible evidence. In addition, the interrogatory is vague, ambiguous and unintelligible so as to make a response impossible without speculation as to its meaning..

INTERROGATORY NO. 38:

Identify separately all parties with an ownership right or claimed ownership right in the 1968 movie featuring the Mark identified in your Notice of Opposition.

RESPONSE TO INTERROGATORY NO. 38:

Opposer incorporates the Preliminary Statement and General Objections set forth above. Opposer objects to the extent the interrogatory seeks information that is confidential and proprietary business information and that such information is not relevant to the current proceeding. Opposer further objects to this interrogatory on grounds that it is compound and vague and ambiguous. Opposer further objects to this interrogatory on grounds that it is compound and vague and ambiguous and the term “production” is vague and ambiguous. Opposer further objects as the interrogatory seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. In addition, the interrogatory is vague, ambiguous and unintelligible so as to make a response impossible without speculation as to its meaning.

INTERROGATORY NO. 39:

Identify separately all Oppositions filed by You regarding the Mark.

RESPONSE TO INTERROGATORY NO. 39:

Opposer incorporates the Preliminary Statement and General Objections set forth above. Opposer objects to the extent the interrogatory seeks information that is confidential and

proprietary business information and that such information is not relevant to the current proceeding. Opposer further objects to this interrogatory on grounds that it is compound and vague and ambiguous and the term “Oppositions” is vague and ambiguous. Opposer further objects to this interrogatory on grounds that it is compound and vague and ambiguous and the term “production” is vague and ambiguous. Opposer further objects as the interrogatory seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. In addition, the interrogatory is vague, ambiguous and unintelligible so as to make a response impossible without speculation as to its meaning.

INTERROGATORY NO. 40:

Identify separately by date all Actions filed by You regarding use of the Mark for Motion Pictures, including the date such Action was filed, the court or tribunal before which such Action was filed, and the disposition of such Action.

RESPONSE TO INTERROGATORY NO. 40:

Opposer incorporates the Preliminary Statement and General Objections set forth above. Opposer objects to the extent the interrogatory seeks information that is confidential and proprietary business information and that such information is not relevant to the current proceeding. Opposer further objects to this interrogatory on grounds that it is compound and vague and ambiguous and the term “Action” is vague and ambiguous. Opposer further objects to this interrogatory on grounds that it is compound and vague and ambiguous and the term “production” is vague and ambiguous. Opposer further objects as the interrogatory seeks information that is neither relevant nor reasonably calculated to lead to the discovery of

admissible evidence. In addition, the interrogatory is vague, ambiguous and unintelligible so as to make a response impossible without speculation as to its meaning.

INTERROGATORY NO. 41:

Explain why Image 10 filed its trademark application on August 9, 2005 for “Night Of The Living Dead”?

RESPONSE TO INTERROGATORY NO. 41:

Opposer incorporates the Preliminary Statement and General Objections set forth above. Opposer objects to the extent the interrogatory seeks information that is confidential and proprietary business information and that such information is not relevant to the current proceeding. Opposer also objects to this interrogatory on grounds the term “Explain” is vague and ambiguous. Opposer further objects to this interrogatory on grounds that it is compound and vague and ambiguous and the term “production” is vague and ambiguous. Opposer further objects as the interrogatory seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. In addition, the interrogatory is vague, ambiguous and unintelligible so as to make a response impossible without speculation as to its meaning.

INTERROGATORY NO. 42:

Explain why Image 10 abandoned its trademark application on July 24, 2007, originally filed on August 9, 2005 for “Night Of The Living D

RESPONSE TO INTERROGATORY NO. 42:

Opposer incorporates the Preliminary Statement and General Objections set forth above. Opposer objects to the extent the interrogatory seeks information that is confidential and

proprietary business information and that such information is not relevant to the current proceeding. Opposer also objects to this interrogatory on grounds the term "Explain" is vague and ambiguous. Opposer further objects to this interrogatory on grounds that it is compound and vague and ambiguous and the term "production" is vague and ambiguous. Opposer further objects as the interrogatory seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. In addition, the interrogatory is vague, ambiguous and unintelligible so as to make a response impossible without speculation as to its meaning.

INTERROGATORY NO. 43:

Explain why George Romero and John Russo agreed mutually to not use the title "NIGHT OF THE LIVING DEAD" for subsequent remakes and sequels.

RESPONSE TO INTERROGATORY NO. 43:

Opposer incorporates the Preliminary Statement and General Objections set forth above. Opposer objects to the extent the interrogatory seeks information that is confidential and proprietary business information and that such information is not relevant to the current proceeding. Opposer also objects to this interrogatory on grounds the term "Explain" is vague and ambiguous. Opposer further objects to this interrogatory on grounds that it is compound and vague and ambiguous and the term "production" is vague and ambiguous. Opposer further objects as the interrogatory seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. In addition, the interrogatory is vague, ambiguous and unintelligible so as to make a response impossible without speculation as to its meaning.

INTERROGATORY NO. 44:

Explain why George Romero and John Russo agreed to would bifurcate the title NIGHT OF THE LIVING DEAD, with George Romero subsequently solely using 'NIGHT OF...' only, and John Russo solely using "...THE LIVING DEAD" only for any later sequels, prequels or remakes.

RESPONSE TO INTERROGATORY NO. 44:

Opposer incorporates the Preliminary Statement and General Objections set forth above. Opposer objects to the extent the interrogatory seeks information that is confidential and proprietary business information and that such information is not relevant to the current proceeding. Opposer also objects to this interrogatory on grounds that it is compound and vague and ambiguous and the term "Explain" is vague and ambiguous. Opposer further objects to this interrogatory on grounds that it is compound and vague and ambiguous and the term "production" is vague and ambiguous. Opposer further objects as the interrogatory seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. In addition, the interrogatory is vague, ambiguous and unintelligible so as to make a response impossible without speculation as to its meaning.

INTERROGATORY NO. 45:

Explain why the original corporate filing for Image Ten filed in Pennsylvania on March 1, 1967 was only for two years, and thereafter expired.

RESPONSE TO INTERROGATORY NO. 45:

Opposer incorporates the Preliminary Statement and General Objections set forth above. Opposer objects to the extent the interrogatory seeks information that is confidential and

proprietary business information and that such information is not relevant to the current proceeding. Opposer also objects to this interrogatory on grounds that it is compound and vague and ambiguous and the term “Explain” is vague and ambiguous. Opposer further objects to this interrogatory on grounds that it is compound and vague and ambiguous and the term “production” is vague and ambiguous. Opposer further objects as the interrogatory seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. In addition, the interrogatory is vague, ambiguous and unintelligible so as to make a response impossible without speculation as to its meaning.

INTERROGATORY NO. 46:

Explain why Image Ten requested Revival of its expired corporate status within Pennsylvania in April 2017.

RESPONSE TO INTERROGATORY NO. 46:

Opposer incorporates the Preliminary Statement and General Objections set forth above. Opposer objects to the extent the interrogatory seeks information that is confidential and proprietary business information and that such information is not relevant to the current proceeding. Opposer also objects to this interrogatory on grounds the term “Explain” is vague and ambiguous. Opposer further objects to this interrogatory on grounds that it is compound and vague and ambiguous and the term “production” is vague and ambiguous. Opposer further objects as the interrogatory seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. In addition, the interrogatory is vague, ambiguous and unintelligible so as to make a response impossible without speculation as to its meaning.

INTERROGATORY NO. 47:

Describe in detail (including dates and locations) all activities created, initiated by or participated in by Image Ten to promote the film NIGHT OF THE LIVING DEAD in 'Night Of The Living Dead conventions' as stated in paragraph 2 of Image Ten's opposition complaint filed 3/29/2017.

RESPONSE TO INTERROGATORY NO. 47:

Opposer incorporates the Preliminary Statement and General Objections set forth above. Opposer objects to the extent the interrogatory seeks information that is confidential and proprietary business information and that such information is not relevant to the current proceeding. Opposer also objects to this interrogatory on grounds that it is compound and vague and ambiguous. Opposer further objects to this interrogatory on grounds that it is compound and vague and ambiguous and the term "production" is vague and ambiguous. Opposer further objects as the interrogatory seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. In addition, the interrogatory is vague, ambiguous and unintelligible so as to make a response impossible without speculation as to its meaning.

INTERROGATORY NO. 48:

List all commercial activities performed by Image Ten relating to promotion of the film NIGHT OF THE LIVING DEAD over the past 50 years.

RESPONSE TO INTERROGATORY NO. 48:

Opposer incorporates the Preliminary Statement and General Objections set forth above. Opposer objects to the extent the interrogatory seeks information that is confidential and

proprietary business information and that such information is not relevant to the current proceeding. Opposer also objects to this interrogatory on grounds the term “commercial activities” is vague and ambiguous. Opposer further objects to this interrogatory on grounds that it is compound and vague and ambiguous and the term “production” is vague and ambiguous. Opposer further objects as the interrogatory seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. In addition, the interrogatory is vague, ambiguous and unintelligible so as to make a response impossible without speculation as to its meaning.

INTERROGATORY NO. 49:

Explain why David Clipper is not listed as a director, officer or shareholder in the application for reinstatement of the corporation entity, IMAGE TEN, in Image Ten’s filing for reinstatement in Pennsylvania on 5/2/2017 although previously listed as a director in the initial IMAGE TEN Articles of Incorporation signed and sealed in December 1966.

RESPONSE TO INTERROGATORY NO. 49:

Opposer incorporates the Preliminary Statement and General Objections set forth above. Opposer objects to the extent the interrogatory seeks information that is confidential and proprietary business information and that such information is not relevant to the current proceeding. Opposer also objects to this interrogatory on grounds the term “Explain” is vague and ambiguous. Opposer further objects to this interrogatory on grounds that it is compound and vague and ambiguous and the term “production” is vague and ambiguous. Opposer further objects as the interrogatory seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. In addition, the interrogatory is vague, ambiguous and unintelligible so as to make a response impossible without speculation as to its meaning.

INTERROGATORY NO. 50:

Explain why George Romero is not listed as a director, officer or shareholder in the application for revival of the corporation entity, IMAGE Ten, in Image Ten's filing for revival in Pennsylvania on 5/2/2017 although previously listed as a director in the initial IMAGE TEN Articles of Incorporation signed and sealed in December 1966.

RESPONSE TO INTERROGATORY NO. 50:

Opposer incorporates the Preliminary Statement and General Objections set forth above. Opposer objects to the extent the interrogatory seeks information that is confidential and proprietary business information and that such information is not relevant to the current proceeding. Opposer also objects to this interrogatory on grounds the term "Explain" is vague and ambiguous. Opposer further objects to this interrogatory on grounds that it is compound and vague and ambiguous and the term "production" is vague and ambiguous. Opposer further objects as the interrogatory seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. In addition, the interrogatory is vague, ambiguous and unintelligible so as to make a response impossible without speculation as to its meaning.

INTERROGATORY NO. 51:

State the current directors of the corporation IMAGE 10, the entity revived by filing in Pennsylvania on 5/2/2017.

RESPONSE TO INTERROGATORY NO. 51:

Opposer incorporates the Preliminary Statement and General Objections set forth above. Opposer objects to the extent the interrogatory seeks information that is confidential and proprietary business information and that such information is not relevant to the current

proceeding. Opposer further objects to this interrogatory on grounds that it is compound and vague and ambiguous and the term “production” is vague and ambiguous. Opposer further objects as the interrogatory seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. In addition, the interrogatory is vague, ambiguous and unintelligible so as to make a response impossible without speculation as to its meaning.

INTERROGATORY NO. 52:

Describe the circumstances by which Image Ten acquired, by assignment, the registered trademark for toys previously maintained by SphereWerx, LLC, including the consideration for such acquisition.

RESPONSE TO INTERROGATORY NO. 52:

Opposer incorporates the Preliminary Statement and General Objections set forth above. Opposer objects to the extent the interrogatory seeks information that is confidential and proprietary business information and that such information is not relevant to the current proceeding. Opposer also objects to this interrogatory on grounds that it is compound and vague and ambiguous. Opposer further objects to this interrogatory on grounds that it is compound and vague and ambiguous and the term “production” is vague and ambiguous. Opposer further objects as the interrogatory seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. In addition, the interrogatory is vague, ambiguous and unintelligible so as to make a response impossible without speculation as to its meaning.

Dated: November 7, 2017

Respectfully Submitted,

/fbhatti/

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CERTIFICATE OF SERVICE

Opposer, Image Ten, Inc., hereby certifies that a copy of this NOTICE OF OPPOSITION has been served upon Applicant on this 7th day of November, 2017, by First Class U.S. Mail, postage prepaid, at the following address:

Rusty Ralph Lemorande
245 N. Crescent Hts, Blvd. #B
Los Angeles, California 90046

/fbhatti/
Attorney for Opposer